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14 as Receiver for AmTrust Bank

15  
16 UNITED STATES DISTRICT COURT  
17 CENTRAL DISTRICT OF CALIFORNIA  
18 WESTERN DIVISION

19  
20 FEDERAL DEPOSIT INSURANCE  
21 CORPORATION AS RECEIVER FOR  
AMTRUST BANK,

22 Plaintiff,

23  
24 vs.

25 DOMINIC J. DUBLINO, an individual,  
26 and DOES 1 through 10, inclusive,

27 Defendants.  
28

Case No.: EDCV12-2121 TJH (OPx)

PROTECTIVE ORDER [9]

1 Pursuant to the stipulation between plaintiff FEDERAL DEPOSIT  
2 INSURANCE CORPORATION as Receiver for AmTrust Bank, and defendant  
3 DOMINIC J. DUBLINO, an individual, (collectively the “Parties”), and being fully  
4 advised by the Parties, and good cause appearing, the Court now enters the following  
5 Protective Order:

6 **PROTECTIVE ORDER**

7 The following restrictions shall be observed as to such properly  
8 designated Confidential Information as may be produced in discovery by the Parties to  
9 this litigation:

10 **I. INTRODUCTION**

11 **A. Definitions**

12 1. “Confidential Document” means any document produced that  
13 bears the stamp or legend specified in Section II, Designation of Confidential  
14 Information, below, which signifies that the Designating Person contends that the  
15 document contains Confidential Information (as Confidential Information is defined in  
16 the next paragraph) entitled to confidentiality under established principles of law.

17 2. “Confidential Information” means a trade secret or other  
18 confidential commercial information, sensitive or proprietary business or financial  
19 information, personal information, or information furnished to the party producing the  
20 information in confidence by a third party. The following categories of documents,  
21 while not exclusive, may be designated as Confidential Information:

22 a. “Loan Origination Files” for the loans at issue in this litigation which  
23 include the borrower's private information, and other confidential or proprietary  
24 business records.

25 b. “Loan Servicing Files” for the loans at issue in this litigation which will  
26 include the borrower's private information.

27 c. “Foreclosure Files” for the loans at issue in this litigation which will  
28 include the borrower's private information.

1 d. “Repurchase Demand Files” for the loans at issue in this litigation which  
2 will include the borrower’s private information, confidential business records, and  
3 other proprietary information.

4 e. “Personal Records” as defined by California Code of Civil Procedure  
5 §1985.3.

6 3. “Document” or “Documents” means all written, recorded,  
7 electronic or graphic material, whether produced or created by a party or another  
8 person, and whether produced pursuant to document request, subpoena, by agreement,  
9 or otherwise, and includes deposition transcripts and exhibits, where applicable.

10 4. “Designating Person” means the Party or Person who initially  
11 produces the Document and marks it as “Confidential-Subject to Protective Order”  
12 pursuant to this Protective Order.

13 5. “Party” or “Parties” means any person or entity that is named  
14 as a party to this litigation.

15 6. “Person” means any natural person, or any legal or business  
16 entity, profit or nonprofit organization, or any government agency.

17 7. “Discovery Material” means: (a) all documents produced in  
18 this action; (b) all deposition testimony taken in this action, exhibits thereto and any  
19 video or transcripts thereof, whether in written or computer format; and (c) responses  
20 to interrogatories, responses to requests for admission, and all other written discovery  
21 served or filed in this action and all contents of such discovery.

22 8. “Disclose” means to show, give, make available, reproduce,  
23 communicate or excerpt any Discovery Material, or any part or contents thereof.

24 **B. Good Cause**

25 This action involves a dispute between defendant DOMINIC J. DUBLINO, an  
26 individual, and plaintiff FEDERAL DEPOSIT INSURANCE CORPORATION as  
27 Receiver for AmTrust Bank, relating to appraisals performed in connection with loans  
28 purchased by AmTrust Bank. This litigation will involve the review and analysis of

1 Loan Origination Files, Loan Servicing Files, Foreclosure files, Repurchase Demand  
 2 Files and other Personal Records of individuals who applied for and obtained mortgage  
 3 loans at issue. Good cause exists to grant the Parties' request for a Protective Order to  
 4 (1) preserve the privacy interests of third party borrowers; (2) protect the confidential  
 5 business records and proprietary information of the plaintiff and defendant; and (3)  
 6 allow the Parties to exchange information in the most expeditious fashion possible,  
 7 with a minimum burden, expense, dispute, and delay.

### 8 **C. Scope of Protective Order**

9 1. This Protective Order applies to all Parties to this action and their  
 10 counsel as well as retained and non-retained experts and/or consultants.

11 2. Nothing in this Protective Order shall require disclosure of any  
 12 information or material that is protected from disclosure by any applicable privilege.

13 3. Any Party hereto may make a good faith objection to the  
 14 designation of any document, response, testimony, or information as "Confidential  
 15 Information" by the Designating Person, and may make a motion for an order  
 16 compelling disclosure of and/or access to such material without restriction, after  
 17 attempting to resolve the objection with the Designating Person. Applicable Federal  
 18 and/or California law shall govern the burden and standard of proof on any such  
 19 motion. Prior to the submission of any such dispute to the Court, the challenging Party  
 20 shall provide written notice to the Designating Person of its disagreement with the  
 21 designation, and those Persons shall try first to resolve such a dispute in good faith.  
 22 Pending the resolution of any such objection or motion, any Discovery Material, the  
 23 confidentiality of which is disputed, shall remain subject to the terms of this Protective  
 24 Order. A Party shall not be obligated to challenge the propriety of information  
 25 designed as Confidential Information at the time the designation is made and failure to  
 26 do so shall not preclude a subsequent challenge thereto. Notwithstanding the  
 27 foregoing, any motion challenging a confidential designation shall be made in strict  
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1 compliance with Local Rule 37-1 and 37-2 and including the obligation to prepare and  
2 submit Joint Stipulations concerning the matters in dispute.

3           4. This Protective Order shall not abrogate or diminish any  
4 contractual, statutory, or other legal obligation or right of any Party or Person with  
5 respect to information designated as "Confidential Information" pursuant to this  
6 Protective Order. The fact that information is or is not designated as "Confidential  
7 Information" under this Protective Order shall not determine what a trier-of-fact may  
8 find to be confidential or proprietary.

9           5. This Protective Order shall not govern the use by a Party of any  
10 Discovery Material otherwise lawfully in its possession, notwithstanding the fact that  
11 the Party either produces that Discovery Material in the course of discovery in this  
12 action or receives a duplicate copy of that Discovery Material through discovery in this  
13 action.

14           6. The Parties may agree to accord Discovery Material produced in  
15 this action even greater confidentiality protection than that provided in Section II of  
16 this Protective Order, and nothing in the provisions of this Protective Order shall be  
17 deemed to preclude any Person from seeking and obtaining from the Court such  
18 additional protection with respect to the confidentiality of Discovery Material as may  
19 be appropriate or necessary.

20           7. Discovery Material shall not be disclosed to any Person or entity  
21 except as expressly set forth herein. All Discovery Material produced or provided by  
22 any Designating Person in connection with this litigation shall be used by the Parties  
23 only for the purposes of this action, and may be used for such purposes, such as and  
24 including depositions, motions, exhibits, pre-trial preparation, trial or appeal.  
25 Otherwise, except by order of the Court, such Discovery Material shall not be used by  
26 any Party other than the producing Party for any other purpose.

27           8. Inadvertent production of privileged information shall not constitute  
28 a waiver of any applicable privilege. Upon written notice by the producing or

1 designating Party that privileged information was inadvertently produced, all Parties  
2 shall destroy or return all copies of the information to the producing or designating  
3 Party within ten (10) days of such notice.

## 4 **II. CONFIDENTIAL INFORMATION**

### 5 **A. Designation of Confidential Information**

6 1. A Designating Person, who reasonably believes in good faith that a  
7 Document being produced contains Confidential Information, may designate such  
8 Document as containing such information only by: (1) Bates stamping such Document;  
9 and (2) stamping such Document with the following legend: "CONFIDENTIAL  
10 INFORMATION."

11 2. Failure of any Designating Person to designate Confidential  
12 Information in the manner described in Paragraph 1 hereof shall not preclude any  
13 Designating Person from thereafter in good faith making such a designation.  
14 Documents and materials so designated shall be fully subject to this Protective Order  
15 and treated thereafter according to the new or corrected designation.

### 16 **B. Qualified Person Re Confidential Information**

17 Any document or other Discovery Material designated as "Confidential  
18 Information" may be disclosed only to the following Persons and/or entities:

19 1. The Court, its officers, jury, and any special master, referee, or  
20 mediator authorized to act in this proceeding;

21 2. Counsel of record for the Parties to this action, and their employees  
22 or employee equivalents (e.g., legal assistants, secretaries, clerical staff, copy vendors,  
23 etc.) who are regularly employed by such counsel and who are actively engaged in  
24 assisting such counsel in this action;

25 3. Court reporters, deposition reporters, and their staff, to the extent  
26 necessary to perform their duties;

27 4. Witnesses in the course of a deposition taken in this action;  
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1                   5. The Parties to this action, and those officers, directors, managing  
2 agents, or employees of the Parties hereto who are actively engaged in the preparation  
3 of this action for trial or for other resolution;

4                   6. Any retained or non-retained expert and/or consultant who is  
5 engaged in the preparation of this action for trial or for other resolution and who agrees  
6 in writing to be bound by the confidentiality requirements of this Order.

7                   **C. Limited Use of Confidential Information**

8                   Documents and Discovery Material designated “Confidential Information” shall  
9 be used solely for this lawsuit, and shall not be used for any other purpose, including,  
10 but not limited to, any other litigation, arbitration, or claim.

11                   **D. Procedure for Filing of Confidential Information with the Court**

12                   In the event that any portion of any Confidential Information is submitted to the  
13 Court for any purpose, the Filing Party shall comply with the following:

14                   1. A Filing Party shall sanitize or redact the documents and/or  
15 Confidential Information so as to remove any reference to Confidential Information  
16 when this can be accomplished without destroying the purpose for which the  
17 documents and/or Confidential Information is to be filed. Following sanitization, the  
18 Filing Party shall present the sanitized document to the Designating Party, who shall  
19 then have three (3) business days (the “Review Period”) to review the sanitized  
20 document for Confidential Information. Upon the expiration of the Review Period, or  
21 upon the Designating Party’s sooner notification to the Filing Party that the  
22 Designating Party is satisfied that the sanitized document contains no Confidential  
23 Information, the sanitized document may be filed in its redacted and/or sanitized form  
24 upon the public record as if it were any other filing. If the Designating Party objects to  
25 the filing of the Confidential Information prior to expiration of the Review Period, the  
26 Designating Party shall not oppose the filing of the Confidential Information under  
27 seal. If a timely objection is made during the Review Period, the Filing Party may then  
28 immediately apply to file the Confidential Document under seal.



1                   2. Alternatively, for Confidential Information for which the procedure  
2 of paragraph 2.D.1, above is not applicable or not used, within three (3) business days  
3 before the filing, the Filing Party will notify the Designating Party by Bates number or  
4 other reasonable description, of the Confidential Information that the Filing Party  
5 intends to lodge with the Court under seal. The Designating Party will notify the  
6 Filing Party within one (1) business day after receiving this notice if the Designating  
7 Party agrees that some, part, or all of the Confidential Information need not be lodged  
8 with the Court under seal. A Designating Party shall not unreasonably withhold its  
9 agreement that some, part, or all of the Confidential Information need not be lodged  
10 with the Court under seal, however a Designating Party is under no obligation to waive  
11 any claim of confidentiality that is made in good faith. The court's denial of any  
12 application to file under seal shall not prejudice or limit the Filing Party from seeking  
13 to use, file or to challenge the Confidential Information designation, of any information  
14 or documents designated as Confidential Information, as provided in this Stipulation,  
15 or according to law, or to prejudice or limit a Party's right or ability to timely prosecute  
16 or defend this action, or any motion or proceeding within this action.

17                   3. In accordance with Local Rule 79-5, the Filing Party will present to  
18 the Court the document(s) submitted for filing under seal, a written application , and a  
19 proposed order. Further, in accordance with Local Rule 79-5, the original and judge's  
20 copy of the documents to be filed under seal shall be sealed in separate envelopes with  
21 a copy of the title page attached to the front of each envelope. The Parties recognize  
22 that one of the manifest purposes of this Stipulated Protective Order is to avoid the  
23 expense associated with litigating discovery disputes over confidentiality-related issues  
24 and as such the Parties agree that they will not oppose any written application seeking  
25 the sealing of documents absent a substantial justification to do so.

26                   4. In accordance with Local Rule 79-5, the Filing Party will present to  
27 the Clerk for filing, in paper format, any materials containing Confidential Information  
28 and will electronically file a Notice of Manual Filing in accordance with Local Rule 5-



1 4.2.

2 5. Nothing in this Stipulation, or by using the procedures in this  
3 section, shall prejudice or limit any party's rights under this Stipulation or law from  
4 seeking to file or challenge the Confidential Information designation of material,  
5 documents or information designated as Confidential Information.

6 **D. Hearing Re Confidential Information**

7 Counsel for any Party may request that any hearing or testimony with respect to  
8 information that has been designated "Confidential Information" by that Party shall be  
9 held in camera and the transcripts thereof sealed as provided in Section II, above.

10 **E. Depositions Re Confidential Information**

11 The Parties may use Confidential Documents and Confidential Information  
12 during depositions in this action. In the event that any document or other Discovery  
13 Material designated as "Confidential Information" is marked as an exhibit in a  
14 deposition, or any question is asked at a deposition that calls for or requires the  
15 disclosure of Confidential Information, any Party may request within twenty (20) days  
16 after receipt of the transcript of the deposition (through written notice to all Parties)  
17 that any portion of such deposition transcript relating to Confidential Information be  
18 designated pursuant to this Protective Order. If the designation is made after the court  
19 reporter has prepared the transcript, each counsel shall be responsible for appropriately  
20 labeling all of his or her copies of such deposition transcript.

21 Any Party also may request at the deposition (through a notation on the record)  
22 that the portion of the deposition transcript relating to such Confidential Information be  
23 treated as follows:

24 The reporter shall separately bind the portion(s) of the transcript  
25 containing Confidential Information, and any exhibit(s) to the deposition designated as  
26 "Confidential Information," and shall mark such portion(s) and exhibit(s) substantially  
27 as follows:

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CONFIDENTIAL INFORMATION

FDIC vs. DOMINIC J. DUBLINO, et al.

Case No. EDCV12-2121 TJH (OPx)

**III. POST-DISCOVERY TREATMENT OF DESIGNATED INFORMATION**

1. This Protective Order shall not govern at trial. The Parties to this action shall attempt to agree on procedures to protect at trial the confidentiality of information designated pursuant to this Protective Order and shall, prior to trial, submit such proposed procedures to the Court for its approval or modification.

2. Not later than thirty (30) days after the final disposition of this litigation, including any appeals, all Discovery Material shall, at the option of the Receiving Party, be returned to counsel for the Producing Party or to the Designating Persons or destroyed and a certificate of destruction provided. If any Discovery Material is furnished under this Protective Order to any expert or to any other Person, the attorney for the Party retaining such expert or furnishing the Discovery Material shall be responsible to ensure that it is returned and disposed of pursuant to this Protective Order.

3. No part of the terms of this Protective Order may be terminated, except by the written stipulation executed by counsel of record for each Party, or by an order of this Court for good cause shown. This Protective Order shall survive any final disposition of this case, and after termination of this action, the Court shall retain jurisdiction to enforce or modify this Protective Order.

4. If at any time any Confidential Information protected by this Protective Order is subpoenaed or requested by any court, administrative or legislative body, person or entity, other than a Party to this action purporting to have authority to require the production of such information, the Party to whom the subpoena or other request is directed shall immediately give written notice thereof to any Party which has designated such information as Confidential Information so as to advise such Party of the need to promptly obtain a protective order or act to quash the subpoena. The Party

1 to whom the subpoena or other request is directed shall not produce the Confidential  
2 information until the party seeking to maintain confidentiality has had thirty (30)  
3 calendar days to obtain an appropriate order. However, nothing contained in this  
4 Protective Order should be construed as authorizing or encouraging a Party in this  
5 action to disobey a lawful subpoena issued in another action.

6  
7 IT IS SO ORDERED.

8 DATED: May 17, 2013



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9 HON. TERRY J. HATTER, JR.  
10 UNITED STATES DISTRICT JUDGE  
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